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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,397	04/22/2004	Michael Schindzielorz	039861-0112	5403
22428	7590	07/28/2006	EXAMINER	
FOLEY AND LARDNER LLP			JUSKA, CHERYL ANN	
SUITE 500			ART UNIT	
3000 K STREET NW			PAPER NUMBER	
WASHINGTON, DC 20007			1771	

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/829,397

Applicant(s)

SCHINDZIELORZ ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 4-8, 13-17, 30, 42, 43 and 46-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9-12, 18-29, 31-41, 44, 45, 53, and 54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 08/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-29, 31-49, 53, and 54, in the paper filed April 24, 2006, is acknowledged. Additionally, applicant's election of leather for Species A and spacer fabric for Species B is acknowledged. Thus, the claims elected for examination are 1-3, 9-12, 18-29, 31-41, 44, 45, 53, and 54. Claims 4-8, 13-17, 30, 42, 43, and 46-52 are hereby withdrawn as non-elected.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 9-12, 24, 40, 41, 44, 45, 53, and 54 rejected under 35 U.S.C. 102(b) as being anticipated by US 2002/0140258 issued to Ekern et al.

Ekern discloses a seat assembly comprising a porous upper surface layer of a fabric or perforated leather 14, a first porous inner layer 16, a spacer fabric 22, and a lower non-porous surface layer 20 (abstract, sections [0017] – [0021], and Figures 2, 2a, and 3). Said spacer fabric comprises an upper layer of fabric netting and a lower layer of fabric netting supported by a middle layer of pile threads (section [0021]). Layers 14, 16, and 20 may be attached by sewing (section [0017]). Thus, Ekern teaches a cover layer of leather laminated to a porous material of a

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spacer fabric, wherein the layers are sewn along the edges thereof. Therefore, claims 1-3, 9-12, 24, 40, 41, 44, 45, and 54 are clearly anticipated by the cited Ekern reference.

Regarding claim 53, while Ekern does not explicitly teach that the cover layer has secondary patterning so that the space fabric layer substructure is not apparent, it is asserted that this limitation is met by the teaching of perforated leather as the cover layer for the spacer fabric. Hence, claim 53 is also anticipated by the cited Ekern reference.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 18-22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Ekern reference in view of US 5,896,758 issued to Rock et al.

While Ekern teaches a spacer fabric, the reference fails to teach the particulars of the construction of said spacer fabric. Hence, one must look to the prior art for known spacer fabric constructions. For example, Rock teaches a spacer fabric comprising a knitted first and second outer layers connected by a middle layer of resilient pile yarns (abstract and Figure 1). The first outer fabric layer may be made of a multifilament stitch yarn having a denier of 300-600 and multifilament lay-in yarn of 70-200 denier (col. 2, lines 26-33), while the second outer layer may be made of stitch yarns and lay-in yarns of 150-300 denier (col. 3, lines 1-5). The pile yarns may be monofilaments or multifilaments having a denier of 40-150 (col. 2, lines 56-67). Said

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pile yarn may be nylon or polyester (col. 2, lines 56-67 and col. 2, lines 33-40). Thus, it would have been readily obvious to one skilled in the art to select a spacer fabric having the recited features of claims 18-21 since said features are well known in the art for producing successful spacer fabrics.

With respect to claim 25, applicant's attention is directed to Figure 1 of Rock which shows a honeycomb pattern produced by the knitted outer fabric layer. Hence, claim 25 is also rejected.

Regarding claim 22, while the prior art fails to teach a thickness of the spacer fabric, said claim is deemed obvious over said prior art. Specifically, it would have been obvious to one skilled in the art to employ a spacer fabric having the claimed thickness, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Hence, claim 22 is also rejected.

6. Claims 18-23, 25, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Ekern reference in view of US6,627,562 issued to Gehring, Jr.

While Ekern teaches a spacer fabric, the reference fails to teach the particulars of the construction of said spacer fabric. Hence, one must look to the prior art for known spacer fabric constructions. For example, Gehring teaches a warp knit spacer fabric comprising a first and second outer layers connected by a middle layer of monofilament pile yarns interconnecting said outer layers (abstract, col. 2, lines 16-22, and Figure 1). The outer layers are knit independently of each other to permit layers having different knitting constructions from different yarn types and deniers (col. 2, lines 49-53). For example, one outer layer may be of an open mesh

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construction for optimum air circulation, while the other layer may be of a solid and heavy construction (col. 3, lines 1-11). One outer layer may be made of multifilament polyester yarns having a denier of 70-300 (col. 2, lines 53-59). The pile yarns may be polyester and are preferably monofilaments having a denier of 70-200 (col. 2, lines 34-48). The spacing of the two outer layers may be 12-30 mm depending on the product requirements (col. 2, lines 24-32). Thus, it would have been readily obvious to one skilled in the art to select a spacer fabric having the recited features of claims 18-23 and 29 since said features are well known in the art for producing successful spacer fabrics.

With respect to claim 25, it is argued that knitted spacer fabrics inherently will produce a honeycomb type-pattern. Hence, claim 25 is also rejected.

7. Claims 31-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Ekern reference.

While Ekern fails to explicitly teach how to bond the leather cover layer and the spacer fabric, it would have been readily obvious to one skilled in the art laminate the layers by the means recited by applicant. Specifically, common lamination means include adhesive bonding, including cold curing adhesives, thermoset adhesives, and UV curable adhesives, and by welding, such as radio frequency, ultrasonic, thermal, and dielectric welding. Applicant is hereby given Official Notice of this fact. Hence, it would have been readily obvious to one skilled in the art to bond the laminate layers of Ekern by means readily known and understood in the art.

Additionally, the selection of adhesive-type and composition, including flame retardant adhesives, is within the level of ordinary skill in the art. It has been held to be within the general

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skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

Furthermore, it is noted that the method of welding is not necessarily given patentable weight at this time. It is argued that the limitations thereof are method limitations in a product claim. As such, said limitations are not given patentable weight at this time. In order to be given patentable weight, a method limitation must materially effect the final product in a structural manner. The presence of process limitations on product claims in which the product does not otherwise patentably distinguish over the prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656. Thus, claims 31-39 are also rejected.

Allowable Subject Matter

8. Claims 26-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. While the prior art teaches outer layers of a spacer fabric having different air permeabilities from each other, said prior art does not teach or fairly suggest different air permeabilities within a single outer layer in varying portions of said outer layer as is recited in claim 26. Therefore, claims 26-28 contain allowable subject matter.

Conclusion

9. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CHERYL A. JUSKA
PRIMARY EXAMINER

cj
July 24, 2006